



[TRANSLATION]

Citation: *ED v Minister of Employment and Social Development*, 2023 SST 1706

**Social Security Tribunal of Canada
General Division – Income Security Section**

Decision

Appellant: E. D.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated September 27, 2019
(issued by Service Canada)

Tribunal member: Sylvie Charron

Type of hearing: Questions and answers

Decision date: October 3, 2023

File number: GP-19-1602



Decision

[1] The appeal is dismissed.

[2] The Appellant isn't eligible for Guaranteed Income Supplement (GIS) benefits under the *Old Age Security Act* (OAS Act) for the period from July 2013 to February 2015. The following explains why I am dismissing the appeal.

Overview

[3] The Appellant applied for an Old Age Security (OAS) pension on September 12, 2008.¹ It was granted on June 4, 2009, and the OAS and GIS benefits start from June 2009.

[4] The Minister conducted a review and determined that the Appellant didn't reside in Canada during the period from December 6, 2012, to March 1, 2015. Since he didn't reside in Canada, he wasn't eligible for GIS benefits from July 2013 to February 2015.

[5] In his response to the Tribunal's questions at a questions and answers hearing, the Appellant says that proceeding by questions and answers is contrary to the decision of the Tribunal's Appeal Division (AD) dated September 27, 2019.² He argues that the AD ordered a hearing, and that wasn't done.³

[6] The Appellant also argues that the Tribunal refuses to specify the exact amount of the debt he has to repay.

[7] Also, the Appellant argues that the constitutional issue he raised remains unanswered.

¹ See GP-17-2265, page GD2-375.

² See AD-19-290.

³ See, in general, IS-21.

[8] Finally, the Appellant still argues that the Tribunal doesn't really exist because, according to the Appellant, the Tribunal only has a mailing address and does business only online and by telephone.

[9] The Minister says that the evidence on file shows that the Appellant wasn't a resident of Canada for the period in question. Since the Appellant received benefits he wasn't eligible for, he has to repay them.

[10] The Appellant offered no evidence in this appeal.

What the Appellant has to prove

[11] For the Appellant to succeed, he has to prove that he was ordinarily resident in Canada between December 6, 2012, and March 1, 2015.

Reasons for my decision

The legality of the questions and answers hearing

[12] In the AD decision dated September 27, 2019, the Tribunal ordered "holding a hearing" in the file.⁴

[13] So, the Tribunal scheduled an in-person hearing at the Service Canada office in Repentigny on February 14, 2020. I went to Repentigny to hear the case. The Minister's representative was on the phone.

[14] The Appellant didn't show up.

[15] The Appellant contacted the Tribunal on February 17, 2020, to indicate, among other things, that the notice of hearing for February 14 sent by priority courier hadn't been claimed. He talked about mail theft and asked for a hearing in late April 2020.⁵

[16] The pandemic brought in-person hearings to an end in mid-March 2020.

⁴ See AD-19-409 at paragraphs 15, 16.

⁵ See IS9-3.

[17] In any event, the Tribunal isn't obligated to hold an in-person hearing in this case. The AD decision requires "holding a hearing," not an "in-person" hearing. Section 21 of the Tribunal Regulations that were in force at the time says that a hearing may be held by way of written questions and answers, teleconference, videoconference, or the personal appearance of the parties.

[18] The Appellant informed the Tribunal that he doesn't have a phone and doesn't want a videoconference. So, the "questions and answers" option is the only option to avoid further delays.

[19] I find that the hearing by way of written questions and answers is reasonable in this case, and consistent with the AD's decision to order a hearing.

Amount of the debt to be repaid

[20] The Appellant says that the Tribunal refuses to indicate the amount of the debt he has to repay.

[21] The Tribunal isn't the forum that can determine the amount of the debt he has to pay. The Minister has to do that. So, it will be up to the Minister to determine the overpayment and the terms of payment if necessary.

[22] A review of the file shows that, on October 3, 2017, the Minister issued a decision that resulted in the family supplement being reinstated. The shortfall since December 1, 2017, was repaid and the overpayment claim of \$58,301 was waived. At the time, the Appellant said that he was satisfied.⁶

[23] The Appellant then said that the Minister hadn't repaid the shortfall from May 1 to September 2016, and the shortfall since the Appellant's marriage on March 22, 2013, to when his wife arrived in Canada on May 17, 2015. He also noted that the \$289.26 penalty on the debt that was cancelled hadn't been forgiven.⁷

⁶ See GD3-3, para 16.

⁷ See GD3-3, para 17.

[24] As noted above, given the Appellant's lack of evidence in this case, it will be up to the Minister to determine what remains to be paid.

The constitutional issue

[25] The AD decision states:

[22] Concerning the constitutionality of section 11(7)(d) of the *Old Age Security Act* and section 21(1)(a) of the *Old Age Security Regulations*, the Applicant must meet the requirements set out in section 20 of the *Social Security Tribunal Regulations* before the General Division can consider these arguments. He will be able to do so when the General Division reconsiders his file.⁸

[26] On August 20, 2020, the Appellant sent a document to the Tribunal—IS14. This document, dated July 20, 2020, is entitled [translation] "Notice of constitutionality of s. 11(7)(d) of the OAS Act and s. 21(1)(a)(b) of the Social Security Tribunal Regulations," and indicated the Appellant's desire to raise a constitutional issue.

[27] In this document, the Appellant argues that he had indeed lived in Canada, in his house in Sorel-Tracy for 15 years, that he had been paying taxes, insurance, electricity, etc. But, he didn't include any documentary evidence with it.⁹

[28] The rest of the document doesn't explain how or in what way the OAS Act or the Regulations breached the Appellant's rights.

[29] On February 1, 2021, I responded to the Appellant that his submissions and comments regarding the OAS Act and the Tribunal Regulations don't meet the mandatory requirements for constitutional challenges set out in paragraph 20(1)(a) of the Regulations. The submissions don't directly address the constitutionality of the Act or the Regulations.¹⁰

⁸ See AD-19-409, para 22.

⁹ See IS14-2, para 7, 8.

¹⁰ See February 1, 2021, letter.

[30] The Appellant also had difficulty serving the attorney general for each province; there is no evidence on file.

[31] As a result, I have dismissed the constitutional challenge. Because of this, this issue is no longer relevant to this appeal.

The shadow Tribunal

[32] Finally, the Appellant argues that the Tribunal exists only online, by telephone, through written correspondence, or a mailing address.

[33] I should point out that the Tribunal is headquartered in Ottawa. It has a team of registry officers, members, and staff who handle the appeals it receives. It is definitely not a shadow tribunal.

The Appellant's evidence

[34] The issue in the file is simple: confirming the Appellant's residence in Canada between December 6, 2012, and March 1, 2015, to be eligible for GIS benefits.

[35] The Appellant has already been told that copies of bills, his passport, and other documents that might prove his presence in Canada may be enough. Nothing was provided.

[36] The burden of proof is on the Appellant in this case. He has to show, with relevant documentary evidence, that he did indeed live in Canada during the period in question. It isn't enough to say, [translation] "The Minister is wrong, the investigators are lying, etc." He has to show, through strong evidence, how and in what way the Minister's evidence is wrong.

[37] The Appellant doesn't really need witnesses in this case; he just has to prove, through documentary evidence—starting with his passport—that he was in Canada during the years in question.

Conclusion

[38] I find that the Appellant isn't eligible for GIS benefits for the period from December 6, 2012, to March 1, 2015, because there is no evidence that he was in Canada.

[39] So, the Minister has to determine the amount of the overpayment.

[40] This means that the appeal is dismissed.

Sylvie Charron
Member, General Division – Income Security Section